



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/170055

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Dunn County Department of Human Services in regard to Medical Assistance, a hearing was held on December 16, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the department may intercept the petitioner's income tax refund to recover an overpayment of medical assistance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner was part of a household that received BadgerCare Plus from August 1, 2006, though December 31, 2007.

3. On December 27, 2007, the county agency brought an action under Wis. Stat. § 49.497 against the petitioner to recover married to recover \$7,094.63 in BadgerCare Plus benefits his household received from August 1, 2006, though December 31, 2007. The petitioner did not challenge that claim.
4. On November 21, 2009, the Department obtained a judgment pursuant to Wis. Stat. § 49.497(1m)(b) in Dunn County Circuit Court against the petitioner for the \$7,094.63 overpayment mentioned in the previous paragraph.
5. On December 11, 2009, the Department brought an action against the petitioner to intercept his income tax refund to recover the overpayment and judgment mentioned in the previous two paragraphs. The Department's notice was sent to the petitioner's last known address. He did not respond to it.
6. The petitioner never requested that the county agency remove him from the his wife's medical assistance household.

DISCUSSION

The Department may intercept a recipient's state income tax refund to recover an overpayment of medical assistance. *See* § 49.85. The Department of Health Services must certify any amount of benefits it is entitled to recover to the Department of Revenue at least once a year. Wis. Stat. § 49.85(2)(a). When bringing the action, the Department. The Department seeks to intercept the petitioner's taxes to recover \$7,094.63 in BadgerCare Plus benefits his household received from August 1, 2006, though December 31, 2007. The basis of the claim is that he and his wife falsely claimed that her son was living with them. The petitioner claims that he is not responsible for the overpayment because he was not living with his wife during the overpayment.

The county agency has already prevailed in an overpayment claim it brought under Wis. Stat. § 49.497 against the petitioner on December 27, 2007, because he never appealed it. It then obtained a judgment pursuant to Wis. Stat. § 49.497(1m)(b) in Dunn County Circuit Court for the overpayment. Finally, the Department previously prevailed in a tax intercept action against him that it filed on December 11, 2009. He did not appeal. He contends that he never got the notices. Perhaps he didn't, but he has an obligation to notify the agency when he moves. The scope of the hearing can be limited to matters the petitioner has not had a previous chance to appeal. Wis. Stat. § 49.85(4)(a). He has had plenty of chances to appeal and has not done so.

But even if I consider the evidence he submitted concerning the overpayment, he will lose. He does not challenge the assertion that his wife's son did not live in the household, which is the basis of the overpayment. (In 2007, only households with a person under 19 years old could receive BadgerCare Plus.) Rather, he contends that he himself did not live there. His primary evidence of this is a restraining order his wife obtained against him on December 8, 2007. This does to bolster his claim because December 2007 was the last month of the overpayment period, and benefits are received at the beginning of the month. Thus, by the time the restraining order prohibiting him from living with his wife was entered, the entire period of the overpayment was complete.

Moreover, it is not enough for the petitioner to prove that he did not live with his wife throughout the overpayment period. The Department can recover BadgerCare Plus overpayments against any "recipient to whom or on whose behalf the incorrect payment was made." Wis. Stat. § 49.497(1)(b). The petitioner had to report any change of circumstances that affected his benefits within 10 days. Wis. Stat. § 49.471(10)(b)3. When a recipient does not report a change that would make him ineligible, the state will make a capitation payment on his behalf. This payment is a benefit he is not entitled to because it allows him to be eligible for medical care just as one who pays an insurance premium is eligible for such care. It

does not matter if the person does not actually receive medical care in that month. The payment is incorrectly made, and the Department may recover it.

It does not matter if the petitioner merely forgot to inform the agency that he did not live with his wife and her child because failing to report any change that would affect his eligibility is a basis for recovering an overpayment. Wis. Stat. § 49.497(1)(a)3. Nothing restricts recovery to instances where the conduct was intentional. That said, the evidence is that the petitioner intentionally took action to receive benefits he was not entitled to. First, even if one accepts his testimony that he moved out in March 2007, that means that he had been there since August 2006, when the overpayment period began. No one has challenged that his wife's son never lived with them during the entire period of the overpayment. Yet the petitioner has implicitly admitted that he received benefits for at least eight months while knowing that he did not meet the prime nonfinancial criterion for eligibility. In addition, the agency received verification of his income on August 16, 2007. If he had moved out, why was he still verifying his income other than to continue to receive benefits he was not entitled to? Maybe his wife provided this, but it is difficult to believe that she could obtain this information without his cooperation, especially if they had already separated.

The petitioner received an overpayment of medical assistance. He had an opportunity to appeal this and failed to do so. He has not put forth any convincing evidence that the overpayment finding was wrong. The overpayment was confirmed by the circuit court, which was followed soon after by an earlier unchallenged action to intercept his tax refund. The Department has met all of the notice and other requirements found in Wis. Stat. § 49.85 for bringing this action to intercept his tax refund. Therefore, I find that it may intercept his state income tax refund to recover this overpayment of BadgerCare Plus.

CONCLUSIONS OF LAW

The Department may intercept the petitioner's state income tax refund to recover an outstanding overpayment of medical assistance.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of February, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 2, 2016.

Dunn County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability